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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
Subject:	Regulatory Scrutiny Board Opinion Proposal for a Directive of the European Parliament and of the Council on European cross-border associations

Delegations will find attached document SEC(2023) 306 final.

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EUROPEAN COMMISSION

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REGULATORY SCRUTINY BOARD OPINION

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European cross-border associations

{COM(2023) 516 final}
{SWD(2023) 292 final}
{SWD(2023) 293 final}
{SWD(2023) 294 final}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Proposal for a Directive on cross-border activities of associations

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

An estimated 3.8 million associations are present in all Member States, generating 2.18% of EU GDP (i.e., EUR 360 billion) in areas such as health, care and social services, social inclusion, culture, sports, humanitarian aid. Associations are regulated through national laws in 24 Member States. This initiative responds to a European Parliament resolution of February 2022, inviting the Commission to set up a statute for 'European associations' and establish common minimum standards for non-profit organisations.

(B) Summary of findings

The Board notes the revision of the report in response to the Board's previous opinion.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not explain why options with different legal bases are presented.

(2) The report is not sufficiently clear on the difference in impacts of the policy options, in particular those resulting from the choice of legal instruments. The comparison of options does not sufficiently differentiate proportionality from subsidiarity aspects.

(C) What to improve

(1) The report should be clear which legal basis fits best with the problems at stake. It should better explain why for the policy options establishing an EU legal form via a regulation Article 352 TFEU is the appropriate legal basis, whereas for options using the delivery instrument of a directive Article 114 TFEU is chosen. Given the non-profit character of the associations in scope of the initiative, the single market dimension should be better justified.

(2) The report should be clearer on the differences in impacts between the policy option that fully prescribes an EU level legal form (PO1a) and the option (PO1b) that limits

EU action to cross-border aspects. It should better explain why the presented cost estimates do not differ. In this respect, it should better explain why it is assumed that the uptake would be similar even though the options have different scopes. It should consider using some estimates (e.g. economic benefits) from the analysis of option PO3 (additional national legal form), given that PO1b and PO3 essentially regulate the same cross-border aspects.

(3) The comparison of options should provide a more granular analysis, so that the differences between the options in terms of effectiveness and efficiency come out in a clearer and more detailed manner, including in the comparison table. The comparison of efficiency, including in terms of Benefit-Cost-Ratios, should be informed by more quantitative information. The scoring methodology used for comparing the options should be explained, in particular, given the similar scoring among the options.

(4) The report should clearly differentiate the assessment of options on proportionality from the one on subsidiarity, including in the comparison table. On subsidiarity, the report should better explain the different scoring between the option creating the European cross-border association (PO1b) and the one creating an additional national legal form of association designed for a cross-border membership and/or cross-border purposes or activities (PO3) given that both options seem to prescribe at EU level the same cross-border aspects. The scores in the comparison summary table should be adapted accordingly.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG must take these recommendations into account before launching the interservice consultation.

Full title	Impact Assessment on a Proposal for a Directive on cross-border activities of associations
Reference number	PLAN/2022/1465
Submitted to RSB on	8 May 2023
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits – Preferred option		
Description	***Amount***	***Comments***
Direct benefits		
Associations: recurrent administrative and compliance cost reduction.	Excess cost reduction (against baseline) of: • **Compliance cost** (internal): EUR 190 million • **Information cost** (internal): EUR 350 million • **Direct cost/ External advisory cost (External running cost):** EUR 230m This leads to a total cost reduction of **EUR 770 million / year.** Over a time span of 15 years, the estimate total cost reduction is of **EUR 8.5 billion**	The preferred policy option has the potential to reduce costs of operation for those associations using it and thus simplifying gathering information, compliance and needs for regular external advisory support. It is not likely to expect such effect to materialise from year 1, and in particular: - **a lag effect of 1 year is included** (where no effects can be observed), due to the time to effectively implement the appropriate policy intervention and produce the desired effects on relevant stakeholders (e.g. introduction into national law). - **starting from year 1, it can be expected a linear increase** from the current situation to the full cost reduction potential (i.e. EUR 770 million per year) until year 5. - **as of year 5, the policy intervention can be expected to be fully effective** and to produce the maximum expected results.

Associations: estimated reduction for launching operations	Excess cost reduction (against baseline): • Internal setup cost (compliance cost): EUR 1 500 • External advisory cost (direct cost): EUR 650 • **Total: EUR 2 150 per launch** Applying this cost estimate to the number of new associations that are expected to launch cross border operations under this policy option, the **excess cost reduction amounts to:** Scenario A: EUR 338 million – EUR 378 million Scenario B: EUR 283 million – EUR 317 million (within the assessed 15 years time frame).	A key benefit of the preferred policy option is that it might lead to a lesser need to fully establish in other Member States and even if the requirements would be largely the same. This affects all components, from internal setup costs to external advisory needs and information gathering costs. Compared to the operation costs, the setup costs will only affect new cross-border (potential estimated) associations and will not affect the existing ones.[1]
Indirect economic benefits		
Unleash new cross-border associations in the single market	Estimated new number of additional cross-border associations range between 157 000 – 176 000 for scenario A and 132 000 – 147 000 for scenario B for the next 15 years, through e.g. new access to markets (including public procurement), scaling of services provision and better access to research and innovation, etc.	These are generated by the reduction of barriers to entry (reduction of cost and administrative burden) and consequent better access to new markets within the single market. Starting from the **baseline scenario (A)**, it is estimated that in case of "no intervention" to unlock any of this potential, the opportunity cost will exist throughout the full duration of these 15 years leading to a total of: • 185 000 associations not
Generation of additional (annual) GDP	Estimated increase in GDP ranges between EUR 3.57 billion – EUR 4 billion for scenario A and EUR 3 billion – EUR 3.3 billion for scenario B.	

[1] Unless those would develop new operations.

Generation of additional employment	Resulting in additional employment (FTE) ranging between 64 000 – 71 000 for scenario A and 54 000 – 60 000 for scenario B.[2]	deciding to expand cross border • 75 000 jobs not being created and • Annual contributions to GDP of EUR 4.2 bn not being made. • A **scenario (B)** is added anticipating a possible overestimation of the opportunity costs above (based on a 10 p.p. lower scenario) starting from: • 155 000 associations not deciding to expand cross border • 63 000 jobs not being created. • an annual contributions to GDP of EUR 3.4 billion not being made
Guaranteeing a level playing field and assurance of operation across the Single market	Not Quantifiable.	
Administrative cost savings related to the 'one in, one out' approach		
(direct/indirect)	Excess cost reduction (against baseline) of: • **Compliance cost** (internal): EUR 190 million • **Information cost** (internal): EUR 350 million • **Direct cost/External advisory cost (External running cost):** EUR 230 million This leads to a total cost reduction of **EUR 770 million / year.** Over a time span of 15 years, the estimate total cost reduction is of EUR 8.5 billion Excess cost reduction (against baseline): • Internal setup cost (compliance cost): EUR 1 500 • External advisory cost (direct	The preferred policy option has the potential to reduce costs of operation for those associations using it and thus simplifying gathering information, compliance and needs for regular external advisory support. It is not likely to expect such effect to materialise from year 1, and in particular: - a lag effect of 1 year is included (where no effects can be observed), due to the time to effectively implement the appropriate policy intervention and produce the desired effects on relevant stakeholders (e.g. introduction into national law). - starting from year 1, it can be expected a linear increase from the current situation to the full cost reduction potential (i.e. EUR 770 million per year) until year 5.

[2] Figures for both scenario's A and B based on a policy uptake range between 85% and 95%. This range corresponds to a central estimate 90% uptake of the policy intervention as suggested by the IA study based on targeted survey and in-depth interviews, as well as legal analysis

	cost): EUR 650 • **Total: EUR 2 150 excess cost reduction per launch**	- as of year 5, the policy intervention can be expected to be fully effective and to produce the maximum expected results. A key benefit of the preferred policy option is that it might lead to a lesser need to fully establish in other Member States and even if the requirements would be largely the same. This affects all components, from internal setup costs to external advisory needs and information gathering costs. Compared to the operation costs, the setup costs will only affect new cross-border (potential estimated) associations and will not affect the existing ones.
Adjustment cost	n/a	There will be a need for adjustment (one-off) for the associations taking the new legal form. These have however not emerged to be significant in the analysis (IA study).

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses (Associations)		Administrations (Member State)	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Action (a)	Direct adjustment costs	None	None	Associations can voluntarily convert to the new legal form. There will be no costs for the associations that don't want to take the new legal form (no adjustment and no administrative costs). The costs for those that take the new legal form will be depending on the extent harmonisation differs from national rules (old form versus the new legal form) and are expected to be not significantly different from the former legal form. Neither targeted survey, nor in-depth interviews indicated that associations expect significant cost related to direct administration impacts based on any of the policy options.		Adaptation of existing register: EUR 100 000. Expected costs to offer online registration option (IT tool) vary between EUR 40 000 and EUR 120 000.	NA
	Direct administrative costs	None	None				
	Direct regulatory fees and charges	None	None	No significant effect, (average registration fee = EUR 60).[3]	None	N.A.	
	Direct enforcement costs	None	None	N.A.	N.A.	N.A.	Depending on registration

3 See also Section 8.1 of the IA.

This opinion concerns a draft impact assessment which may differ from the final version.

	Indirect costs	None	None	N.A.	Neither targeted survey, nor in-depth interviews indicated that competent authorities expect significant cost impacts related to enforcement based on any of the policy options.		requirements differs from existing national rules. Neither targeted survey, nor in-depth interviews indicated that competent authorities expect significant cost impacts related to enforcement based on any of the policy options.
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs	None	None	None			
	Indirect adjustment costs	None	None				
	Administrative costs (for offsetting)	None	None				

EUROPEAN COMMISSION
REGULATORY SCRUTINY BOARD

Brussels,
RSB

Opinion

Title: Impact assessment / Proposal for a Directive on cross-border activities of associations

Overall opinion: NEGATIVE

(A) Policy context

An estimated 3.8 million associations are present in all Member States, generating 2.18% of EU GDP (i.e., EUR 360 billion) in areas such as health, care and social services, social inclusion, culture, sports and humanitarian aid. Associations are regulated through national laws in 24 Member States. Current rules create obstacles, such as additional registrations, when associations operate across EU borders. This may distort the market for non-profit organisations, affecting the EU democratic space and the exercise of EU fundamental rights.

This initiative is the Commission's follow-up to a European Parliament resolution of February 2022, inviting the Commission to set up a statute for 'European associations' and establish common minimum standards for non-profit organisations.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

However, the Board gives a negative opinion because the report contains the following significant shortcomings:

(1) The report does not sufficiently describe the size of the problem.

(2) The report is not sufficiently clear on what its main objective is.

(3) The impact analysis is not clear about the robustness of the estimates.

(4) The report does not ensure that all relevant options are explored. When comparing the options, the report is not sufficiently clear on how effectiveness, efficiency and proportionality are assessed.

(C) What to improve

(1) The report should provide evidence (including stakeholder views) on the existence of the problem. It should also more precisely define the scale of the problem to justify better the proportionality of the initiative and the options considered. Whereas the report

acknowledges the lack or insufficient quality of data on associations at EU and Member State level, it should better explain the reasons behind them. It should be clear on where the data gaps are, and what assumptions have been made. It should bring to the report the available qualitative evidence to better illustrate the magnitude of the problem. The report should indicate whether and how foresight analysis has informed the problem definition.

(2) In view of the Commission's withdrawn proposal on a new legal form for associations in 2005, the report should indicate how conditions have changed. It should clarify what the main objective of the current initiative is. It should also better explain, how this initiative is related to the Social Economy package and Democracy package.

(3) The impacts analysis should clearly explain how additional employment and Gross Value Added as well as the number of additional cross-border associations have been estimated. The report should improve the description on the robustness of the input data and assumptions used along various steps of the analysis. It should clarify how robust the overall analysis is and if there is a risk of overestimation. If assumptions are theoretical, this should be recognised.

(4) The report should explore a more targeted and possibly more proportionate variant of the option establishing EU-level legal form of association, based on a 'European association' only set up for cross-border activities, while the rest remains under Member State law. The report should present the costs and benefits of all relevant options, paying sufficient attention to transposition, implementation and enforcement aspects, including issues of legal clarity, risks of fragmentation and divergent interpretation. In this context, the report should also clarify the implications of the choice of the type of legal delivery instrument i.e. Directive or Regulation, and how this would impact the effectiveness, efficiency and coherence of the options.

(5) The comparison of options should present a comprehensive and consistent narrative to explain how options compare. The scoring methodology needs to be better explained and should be fully consistent with the preceding impact analysis. The report should better explain the choice of the preferred option taking into account the assessment of the options' scores on effectiveness, efficiency and proportionality. It should explain the discrepancy between the efficiency and proportionality assessment on the one hand and the large differences in the proportionality scores on the other hand.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Impact Assessment on a Proposal for a Directive on cross-border activities of associations
Reference number	PLAN/2022/1465
Submitted to RSB on	2 March 2023
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